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THE
BENCH AND BAR
OF MONTREAL

BY
E. FABRE SURVEYER

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PUBLICATION like this would not be complete without a sketch of the Bench and Bar of the Metropolis of Canada. Business men, who control considerable capital and make, with, or sometimes without the assistance of the legal profession, contracts which are susceptible of being discussed sooner or later before the Courts, are, more than any one else perhaps, interested in knowing how justice is rendered in the province, and particularly in the city they live in.

As to the legal fraternity, it is the duty of its members never to miss an opportunity for telling the exact truth about a body of men concerning which so many falsehoods are spoken in jest, or otherwise.

Ab Jove principium: Let us begin by the Bench. The law suits of the citizens of Montreal, of a purely civil character, are decided, in all matters under one hundred dollars in which no future rights are involved, by one of the three judges of the Circuit Court for the district of Montreal, or in a few instances of minor importance, by one of the City Recorders.

Mr. J. L. Perron, K.C., in a most interesting study on "The administration of justice in Montreal," read before the Junior Bar Association about a fortnight ago (December, 1907), remarks that the number of cases taken in the Circuit Court of Montreal is 20,000 each

(1) This pamphlet is, with some occasional additions and corrections, a reprint from the Prosperity Number of the GAZETTE.

year, one half of which are contested and that 8,000 judgments are delivered yearly in that Court.

Litigation for one hundred dollars or more is decided by one of the judges of the Superior Court, from whose decision an appeal may be taken either to the Court of Review (composed of three judges of the Superior Court other than the judge who rendered the first decision) or to the Court of King's Bench, composed of five judges.

There are now fourteen judges of the Superior Court appointed for the district of Montreal, which comprises the whole island of Montreal, and the counties of Laval, Vaudreuil, Soulanges, Laprairie, Chambly and Vercheres. The following figures will give an idea of the amount of work performed by the judges of the District of Montreal, with the occasional assistance of a brother judge from one of the country districts.

Number of judgments rendered:

1886	..	..	..	..	..	1,826
1896	..	..	..	..	..	3,058
1904	..	..	..	..	..	2,068
1905	..	..	..	..	..	3,558
1906	..	..	..	..	..	3,042

The last three tables do not comprise judgments in insolvency matters, the number of which was the following:

1904	..	..	..	..	..	537
1905	..	..	..	..	..	788
1906	..	..	..	..	..	871

Mr. Perron cites the following figures:

Writs issued, 1901	..	..	..	4396	
do	1906	..	..	5363	— Increase, 973
Actions seriously contested, 1901	..	1147			
do	do	1906	..	2022	— Increase, 875

Estimated increase in 1907 over 1906 ..	20 per cent.
City cases on the Review roll—December, 1907 ..	110
Country ..	40

As judges of the Court of Review the number of their decisions, all of which bear upon the merits of the whole case were :

1886	140
1896	434
1904	124
1905	219
1906	227

In the last few years, the number of jury trials in civil matters, which up to 1900 was insignificant, has increased considerably, particularly in actions in damages for accidents and in commercial matters. These trials, which are generally very long, require one or two judges, each month, to devote their time exclusively to them.⁽¹⁾

The translation of the evidence, when the jury is a mixed one, or when the jurors do not understand the language of the witness, makes these trials particularly long and expensive.

Whether the jury trial fad will be of long duration is a doubtful matter, for so far, in cases where the employer's liability is clear, the juries have shown themselves less generous to the "under dog" than most of the judges, and the expense is considerably greater. Besides, their number has so increased that they are now an occasion for

(1) A few years ago, one of these trials was unduly protracted by frivolous questions from the counsel of both parties, to such an extent that the presiding judge interposed and tried to induce one of the lawyers to omit some evidence, which he considered irrelevant. "My Lord," remarked the lawyer, "this is a jury trial, and I submit that the counsel ought to have some latitude."—"I do not object to the latitude," the Judge said, "It is the longitude I am complaining of."

delay, instead of being one for speedy decisions. Furthermore questions of procedure which appear very clear to the man versed in the law, are sometimes such a chaos to the layman, even to him whose intelligence is unquestionably above the average, that verdicts of juries are sometimes reversed by the Supreme Court of Canada, which occasionally orders a new trial, reduces the amount of the condemnation, or dismisses the action absolutely.

It seems, therefore, that but for the fact that a case submitted to a jury is, as a rule, reached faster, and in any event decided sooner than one submitted to a judge, jury trials would not long enjoy, in this district, their present popularity.

It must also be said that reference to arbitrators, which may be made in every case by consent of all parties, has been practically abandoned by the Bar, as productive of expense, delay and illegalities.

The judges, who may order it of their own accord, in some cases, have almost entirely ceased to make use of such privilege, for the same reason.

The Court of King's Bench is composed of six judges, five of whom hear appeals in civil and criminal matters (the latter being comparatively few) for two weeks every month, in the cities of Montreal and Quebec alternately. They also preside over the sittings of the Criminal Court in the cities of Montreal and Quebec.

In Civil matters, the number of judgments rendered by the Court of Appeals at Montreal is the following:

1886	.. .. .	140
1896	.. .. .	75
1904	.. .. .	98
1905	.. .. .	83
1906	.. .. .	113

Of these judgments, of course, a few deal with mere incidents. Most of them, however, deal with the merits of the cases, as appears by the list of appeals taken during these various years :

1886	.. .. .	92
1896	.. .. .	65
1904	.. .. .	78
1905	.. .. .	87
1906	.. .. .	93

All these statistics go to show that a great deal of work is accomplished by our judges, and that, with the exception of 1896, which appears to have been an extraordinary year in some respects, the work has been constantly increasing in quantity.

As, on the other hand, the cost of living, particularly in Montreal, has considerably increased during the last few years, the Dominion Parliament decided to give to the judges, throughout the country, somewhat less inadequate salaries and raised the stipends of the judges of the Superior Court in Montreal and Quebec from \$5,000 to \$7,000 a year, the salaries of the judges of the Court of King's Bench being at the same time raised from \$6,000 to \$7,000 with an additional \$1,000 to the Chief Justice of each Court.

The following year, however, our legislators put a condition to their generosity, and passed this amendment: "No judge mentioned in this Act shall, either directly, or indirectly as director or manager of any corporation, company or firm, or in any other manner whatsoever, for himself or others, engage in any occupation or business other than his judicial duties; but every such judge shall devote himself exclusively to such judicial duties."

The terms of the amendment, as one may notice, are

somewhat sweeping, and, strictly interpreted, would have prevented judges from teaching law in our universities, which, for a few years at least, would have completely upset legal education in Canada, where men who make the teaching of law their exclusive avocation are not to be found, the deans or principals of a few large law schools throughout the country excepted.

In practice, therefore, the law received a less strict interpretation, which, however, proved too onerous for some of our judges, who preferred to retire on the pension allowed after fifteen years of services and seek more remunerative occupations. The Bar and the litigating public were thereby deprived of their knowledge and experience, and it is not impossible that the example of the parting magistrates will be followed, in a near future, by some of their colleagues.

They will, no doubt, be regretted, for although there is hardly a lawsuit where one defeated party does not condemn the judge, for at least twenty-four hours, the relations between the Bench and the Bar, at Montreal, have been uniformly pleasant and harmonious, and the Bar appreciates the efforts made by the judges to divide the work between themselves, that cases may be referred to a judge a reasonably short time after the written pleadings have been filed.

A very ingenious system, to obtain that object, which seems to retreat each time one reaches out for it, has been propounded lately by one of the Superior Court judges, who presides over a rural district. It consists in having all the Circuit Court cases elsewhere than at the capital of each district, decided by district or stipendiary magistrates, whose salary would be raised in consequence, whilst the Superior Court judges would place themselves

at the disposal of the Chief Justice and sit at Montreal during all the time which is not taken up by the business of the local Superior or Circuit Court. It is very hard indeed to make changes in such clumsy machinery as the administration of justice, but the plan seems one of the most feasible ones which have been propounded of late years.

It is possible that the Bar will suggest, in the near future, the adoption of the system now followed in England and Scotland, of referring a case from its inception to a particular judge, who will be called upon to decide all the incidents arising therein.

The Bench is not a body corporate: It is an association of men thrown together by their calling and the call of their Government, submitted only to a few rules of discipline laid down by the Chief Justice of their Court, but in reality amenable only to Parliament. The Bar, on the contrary, is a corporation, with all the rights and most of the obligations attached to corporate existence, under the name of "The Bar of the Province of Quebec", and within the Province there are seven sections, the most important of which is that of Montreal, which form distinct corporations, each of which is authorized to own real estate to the extent of \$50,000.

The early legislation on this subject is peculiar. In 1785, an ordinance was passed (25 Geo. III., ch. 4) the title of which indicates provisions which, in our days, would make the subject of two different statutes. The first part of the law as indicated, refers to the legal profession, and may appear interesting as a sample of the legislation of those days.

25 Geo. III., C. 4. (1785.)

An Ordinance concerning Advocates, Attornies, Solicitors and Notaries, and for the more easy collection of His Majesty's revenues.

“WHEREAS the welfare and tranquillity of families,
 “and the peace of individuals require, as an object of
 “the greatest importance, that such persons only should
 “be appointed to act and practice as barristers, advo-
 “cates, attornies, solicitors, proctors and notaries,
 “who are properly qualified to perform the duties of
 “those respective employments, and that, under certain
 “necessary and proper regulations, be it therefore or-
 “dained and enacted by his honor the Lieutenant-
 “Governor and Commander in Chief of this Province
 “by and with the advice and consent of the Legislative
 “Council thereof, and by the authority of the same, it
 “is hereby ordained and enacted, that from and after
 “the publication of this ordinance, no person shall be
 “commissioned, appointed or permitted to practice in
 “any of His Majesty's Courts of civil jurisdiction in this
 “province as a barrister, advocate, attorney, solicitor or
 “proctor at law, who shall not have, bona fide, served a
 “regular and continued clerkship, for and during the
 “space of five years, under a contract, in writing, for that
 “purpose made and entered into, with some advocate
 “or attorney duly admitted and practising in the courts
 “of civil jurisdiction in this province; or in some other
 “parts of His Majesty's dominions, or with some clerk
 “or register of any court of common pleas or court of
 “appeals, within this province, for the time and space
 “of six years. Unless such person shall have already
 “been called to the Bar, or entitled so to be, and to

“practice as an advocate or as an attorney, in some
 “court of civil jurisdiction, within some parts of His
 “Majesty’s dominions.

“Neither shall any person be entitled to be commis-
 “sioned, or admitted to practice as aforesaid, be com-
 “missioned or admitted to practice in any of the several
 “capacities abovesaid, until after he shall have been
 “examined by some of the first and most able barristers,
 “advocates and attornies of the courts of Judicature in
 “this province, in the presence of the Chief Justice, or
 “two or more Judges of some of His Majesty’s Courts of
 “Common Pleas, and that such person so examined,
 ‘shall be, by the said Chief Justice or Judges, approved
 “and certified to be of fit capacity and character to be
 “admitted to practice the law, in the several courts in
 “this province.”

What the advocates of the Province did before and after the law of 1785 would be an interesting research, no doubt, but would carry us far beyond the limits of this article. Some references to it may be found in the works of the late D. B. Read, Q.C., of Toronto, who shows that the Bar of Ontario is, in some respects, the offspring of the Bar of Quebec, as it existed prior to 1791. In 1792, however, the Upper Canada Legislature enacted that in all matters of controversy or civil rights, resort should be had to the laws of England as the rule of decision, which thenceforth took the place of the French law.⁽¹⁾

The next legislative provisions enacted in matters concerning the Bar, were passed in 1836 (6William IV., ch. 10). They are an interesting prelude to the legis-

(1) Osgoode Hall: Reminiscences of the Bench and Bar, by J. C. Hamilton. Toronto, 1904.

lation commonly known as the B. A. Bill, whereby graduates of our colleges and universities are admitted to the study of liberal professions without the necessity of a preliminary examination, and which, although over twelve years old, is still the subject of frequent discussion.

“An Act to repeal certain parts of an Ordinance therein
 “mentioned, concerning persons to be admitted to
 “practise the Law or to practise as Notaries in this
 “Province.

“2. And it be further enacted that any person who
 “shall have gone through a regular, complete and con-
 “tinued collegiate course of study, including the courses
 “of Belles-Lettres, Rhetoric and Philosophy (including
 “Logic, Moral Philosophy, Mathematics and Natural
 “Philosophy) in one or in several of the seminaries or
 “colleges of Quebec, Montreal, Saint Hyacinthe, Nicolet
 “or Sainte Anne de la Pocatiere, or in any other college
 “legally established, or which shall be legally established
 “in this Province or elsewhere, in which the said courses
 “of study shall be taught, and shall produce a certificate
 “to that effect, under the hand of the Superior of such
 “Seminary or College and shall moreover have served a
 “regular and continued Clerkship under a Contract in
 “writing for that purpose, made and entered into with
 “some Advocate or Attorney duly admitted and prac-
 “tising in the Courts of Civil Judicature in this Province,
 “or with some duly commissioned and practising Notary
 “Public, respectively, for and during the space of four
 “years, and shall in other respects have complied with
 “and fulfilled the requirements of the Ordinance herein-
 “before cited (25 Geo. III., c. 4) shall be entitled to be
 “commissioned and to practise as a Barrister, Advocate,
 “Solicitor, Attorney or Proctor at Law in any of His

“Majesty’s Courts of Civil Jurisdiction in this Province,
 “or as a Notary Public, anything in the said Ordinance
 “to the contrary notwithstanding.”

The first attempt of the Bar of Montreal to acquire corporate existence goes back to 1828, when on March 27th, the members of the Bar, under the auspices of the Court of King’s Bench, then composed of Chief Justice Reid, and of Justices A. F. Uniacke, George Pyke and L. C. Foucher, organized themselves into a Library Association, the first board of management of which was composed of Messrs. Stephen Sewell, Joseph Bedard, Frederick Griffin and Alexander Buchanan.

The association had a social as well as scientific aim and partook of the nature of a club.

The admission fee was \$200, and the annual subscription was of \$5.00.

A similar association was founded in Quebec, under the same auspices, in 1836.

Both associations were evidently prosperous, since in 1840, they petitioned the special Council for the affairs of the Province of Lower Canada, for incorporation, and the preamble of the petition set forth the following reasons in support of the demand:—

“WHEREAS an Association hath been formed in the City
 “of Montreal, in this Province, by divers members of the
 “profession of the Law, resident in that city and the
 “neighbourhood thereof, under the name of ‘The Advoc-
 “cates’ Library and Law Institute of Montreal,’ and for
 “the purpose of purchasing and procuring a good and
 “sufficient Library for the use of the said Association
 “and of such Barristers and Advocates as may hereafter
 “become members thereof; And whereas the members
 “of the said Association have by their Petition represented

“that they have purchased and acquired, and now hold a
 “large and valuable collection of Books with other pro-
 “perty requisite and necessary for the purposes for which
 “they are so associated as aforesaid; and have further
 “represented that the advantages to arise from the said
 “Association would be greatly increased and confirmed
 “by the incorporation of the members thereof, and have
 “prayed so to be incorporated. Be it therefore,” etc. . . .

The association asked to be empowered to acquire and possess property to the extent of five hundred pounds, and also to receive gifts and benefactions, provided the same did not exceed a like sum in yearly value. Judges, sheriffs and prothonotaries were entitled to seek admission in the ranks of the association, as well as duly admitted advocates and barristers, and a special clause of the Act provided that the fact that a judge would be a member of the Association would not be a cause of recusation against him in a suit in which the Association would be a party.

The Association was incorporated June 26, 1840. The Quebec Association was incorporated in the same way, and its charter is in the same terms as that of the Montreal Association, with the exception that while the then officers of the Montréal Association were by the Act, continued in office until the next election, which was to be held within three months, Chief Justice Stuart and Judge Black, of the Vice Admiralty Court were respectively appointed temporary president and vice president of the Quebec Association, until the next election.

It is interesting to observe that most of the charter members of both associations were English speaking, the proportion being 26 against 4 in the Montreal Association and 15 against 16 in the Quebec one. Now,

the English speaking advocates do not form one third of the Montreal Bar, and their numerical proportion in the Bar of Quebec City, is still smaller. The sons of the founders of the Bar Library Associations, being, before all, scions of a practical race, have drifted away from their fathers' calling and sought more lucrative avocations.

In 1849, the law 12 Victoria, c. 45-46, called "An Act to incorporate The Bar of Lower-Canada" was passed. Its preamble is in the following terms:—

"WHEREAS it is important and necessary for the right
 "administration of Justice, that the profession of Advocate,
 "Barrister, Solicitor and Proctor of Law in Lower-Canada
 "should be exercised only by persons capable of performing
 "the duties thereof with honor and integrity; And where-
 "as it is expedient for the more certain attainment of this
 "important object, to establish more effectual regulations,
 "with regard to the said profession, and the interests and
 "rights of the members thereof:

"Be it enacted by the Queen's Most Excellent Majesty,
 "by and with the advice and consent of the Legislative
 "Council and of the Legislative Assembly
 "That from and after the passing of this Act, all Advo-
 "cates, Barristers, Attorneys, Solicitors and Proctors
 "at Law in Lower-Canada, admitted as such at the time
 "of the passing of this Act, shall be and form a Corporation
 "under the name of The Bar of Lower-Canada; which said
 "Corporation shall be divided into three sections, that is
 "to say: one section for the District of Montreal, one for
 "the District of Quebec, and one for the District of Three-
 "Rivers; the Advocates, Barristers, Attorneys, Solicitors
 "and Proctors at Law residing in the District of Saint
 "Francis forming part of the section of the District of

“Three-Rivers; and those residing in the District of Gaspé
“forming part of the section of the District of Quebec.

Section VII deals with the Powers of the Councils of Sections as follows:—

“And be it enacted that each of the said Councils of Sections, shall in its respective Section, have power:

First.—“For the maintenance of the discipline and
“honor of the body, and as the importance of the case may
“require, to pronounce a censure or reprimand, through
“the Batonnier of such section, against any member who
“shall have become guilty of any breach of discipline, or
“of any action derogatory to the honor of the Bar; and
“it shall be lawful for such Council to deprive such member
“of the right of voting, and even of the right of assisting
“at the meetings of the Section, for any term not exceed-
“ing one year, and also, according to the nature of the
“offence, to punish such member by suspending him from
“his functions for any period not exceeding one year, sub-
“ject to the approval of the General Council as hereinafter
“provided.

Secondly.—“To prevent and reconcile and settle all
“differences between members of the section, more espe-
“cially all differences which might arise in professional
“matters.

Thirdly.—“To prevent, hear, reconcile and determine
“all complaints and claims made by third parties against
“members of the Bar in the section, in matters connected
“with their professional duties.

Fourthly.—“To admit candidates to the study or to
“the practice of their profession, and to decide upon the
“capacity and good morals of the said candidates.

Fifthly.—“To represent the members of the Bar,

“whenever the interests or the rights of the profession
“shall require it.”

The law of 1849 scornfully repeals the obsolete provisions of the existing laws and is enacted as a public Act. It gives a corporate existence to the Bar of Lower Canada, and to the three sections thereof then in existence; it vests it with power to acquire personal or real estate to the extent of five thousand pounds, and to make by-laws for the interior discipline and honour of members of the Bar. Powers are given to the sections to censure, reprimand, or even suspend members of the Bar, to settle differences between them, to admit candidates to the study or practice of the profession, and decide upon their capacity and good morals. Before the Act, the examinations to practice were passed before the judges, as already stated.

The Act of 1849 gives officially, for the first time, the title of *Batonnier* to the president of the corporation or of a section thereof.

The title of *batonnier* was given to the president of the sodality of St. Nicholas (patron saint of lawyers) to which letters patent were granted by Philip II. in April 1342, because, in the ceremonies of the sodality he carried the emblem (*baton*) of the Saint.

The position of *batonnier* has always been, in France, as honourable as it is onerous.

“It is,” says Larousse’s Dictionary, “a much coveted and desired honour; it attests talent, independence and honesty. In Paris, particularly, where the number of lawyers is considerable, where the Bar contains such shining lights, it is a great honour to be called to assume this noble title, particularly as it is conferred upon a lawyer by his peers.”

In Paris, it is an unbroken custom that the batonnier, elected yearly, is selected for a second term.⁽¹⁾

In a young country, like Canada, traditions cannot be as persistent and as sacred as they are in France. The re-election of the batonnier for a second term only became the rule in 1879, when Mr. Lacoste (now Sir Alexander), was elected to succeed to the late Mr. W. H. Kerr, who had served a brilliant term of four years.

Following is a list of the members of the Bar of Montreal whose term of office as batonnier was of two years or more:—

1849-52—Toussaint Pelletier, Q. C.

1856-58—Henry Stuart, Q. C.

1864-66—Hon. R. Laflamme, Q. C.

1875-79—Wm. H. Kerr, Q. C.

1879-81—Sir Alexander Lacoste, Q. C.

1881-83—W. W. Robertson, Q. C.

1883-85—Hon. C. A. Geoffrion, Q. C.

1885-87—Hon. Honoré Mercier, Q. C.

1887-89—Rouer Roy, Q. C.

1890-92—Hon. F. L. Béique, Q. C.

1893-95—Hon. John Dunlop, Q. C.

1895-97—Hon. J. E. Robidoux, Q. C.

1897-99—C. B. Carter, Q. C.

1899-1901—Hon. J. A. C. Madore, Q. C.

⁽¹⁾ Although the re-election of the batonnier has become a tradition, "and although, since the day when the Bar has been reinstated in the secular rights which it possessed before the Revolution of 1789, there has been no derogation from that custom, the Batonnier loves to remember, that submitted to the free suffrage of his brothers who thus remain at every moment his judges, he is in reality the expression of the popular will and has nothing to expect but from it. His re-election invigorates him, and the new confidence which is shown to him gives him at the same time the strength to work for the good of all and the authority which he needs to do so successfully." (Opening address of Mr. Eugene Pouillet, batonnier of the Bar of Paris, at the Commencement Exercises of 1896).

To those names must be added those of Mr. C. S. Cherrier, Q. C., who was batonnier in 1855-6, after having been twice president of the Library Association, in 1836-8 and in 1849; of Sir Antoine Aimé Dorion, who filled the position during three terms; in 1852-53, in 1861-62 and in 1873-75; of Mr. Strachan Bethune, K. C., who occupied it twice; in 1859-60 and in 1862-63.

The late Judge Madore was the last batonnier who served two terms in succession. In 1900, at the annual meeting of May 1, Mr. (now Judge) St. Pierre moved that in the future the batonnier and secretary be not re-elected for a second term. The wish was recorded in the Minutes of the meeting without any vote being taken and remained unnoticed until the next election, where it was laid down as an established rule with such energy that Mr. W. J. White, K. C., who had displayed unusual activity and zeal in the office of batonnier, advised his friends that he would not seek re-election.

Once the rule was laid down, some of the members of the Bar, among the most conscientious of them, and the most desirous to keep up the standard of the profession, began to consider and examine it with fear and trembling, asking themselves whether there would be in their ranks a sufficient number of subjects fit for the exalted position of batonnier, to enable them to produce a new candidate every year. So far, fortunately, the Bar of Montreal has shown that there is no dearth of able representatives in its ranks and the batonniers of the Montreal Bar during the first years of the 20th century have proved worthy of their predecessors.

Following is a list of the batonniers since the beginning of the century, when the Bar of Montreal freed

itself from the yoke of the secular traditions of the Paris Bar:—

- 1901-1902—W. J. White, K. C.
- 1902-1903—S. Beaudin, K. C.
- 1903-1904—D. Macmaster, K. C.
- 1904-1905—Gust. Lamothe, K. C.
- 1905-1906—Eug. Lafleur, K. C.
- 1906-1907—P. B. Mignault, K. C.
- 1907-1908—F. E. Meredith, K. C.

The inconveniences of the new rule have already appeared.

The Batonnier rules the Bar for a year, commences important works, and then, when the year is over, hands the reins to his successor, who possibly was not a member of the Council during the year immediately preceding his election as batonnier, and may be assisted by a Council formed, wholly or partly, of newcomers. This might materially endanger the success of the undertakings commenced. To remedy that evil, a plebiscite was taken, at the last election, on the question whether the retiring batonnier should not be ex-officio member of the Council for the three following years. The proposition was voted down, because the term of three years appeared excessive: had the framers of the proposition limited the term of office in the Council of the retiring batonnier to one year, and even to two years, the wisdom of the provision would probably have appealed to a larger number of advocates.

Let us go back to the creation of the Bar in 1849. The first secretary of the Bar of Montreal was Mr. Strachan Bethune, then a lawyer of six years standing, now the Nestor of the profession. The length of Mr. Bethune's career at the Bar has only been equalled by its brilliancy. Throughout its different epochs, he has always been held

in the highest esteem by the various generations which appeared at the Bar while he was in active practice. It is sad to think that the Bar of Montreal omitted to celebrate his golden or his diamond jubilee, for no one was worthier of such an honour. Mr. Bethune was twice batonnier of the Bar of Montreal, in 1859-60, and 1862-3, and, which is more remarkable still, he was one of the examiners who called to the Bar, fifty years ago last January, the present Lieutenant-Governor of the Province of Quebec.

Other veterans of the Bar are Messrs. James O'Halloran, K.C., of Cowansville, Que., admitted in 1852; Mr. Geo. B. Cramp, K.C., admitted in 1854; Mr. I. A. Jodoin, admitted in 1858.

Mr. Jodoin remembers to this date the place where he put up his shingle in 1858, on St. Vincent St.; the law offices next to him were those of the firm of Fabre, Lesage & Jetté, the members of which were then young lawyers. It is pleasant to relate that the three members of the firm, though no longer in active practice at the Bar, nor residents of Montreal, are still alive and hearty; Mr. Fabre being Canadian Commissioner in Paris; Mr. Lesage, deputy-minister of Public Works in Quebec, and Mr. (now Sir Louis) Jetté, Lieutenant-Governor of the Province.

Although the incorporation of the Bar of Lower Canada was not meant to interfere with the Library Associations, it nevertheless gave them a severe blow. They continued to exist however, and gallantly rented their books to the new corporation, for the benefit of the Bar in general. They eventually died of old age and general debility, and some twenty years ago, the last treasurer of the Montreal Association, the late Mr. Day, Q.C., refused to accept the annual rental which the Bar had bound

itself to pay for the books, which since then have been considered, by comity, the property of the Bar.

The Bar Act was frequently amended; it was consolidated in 1866, 1881, 1886, and 1888. An amending law containing several radical changes was prepared a few years ago, but never passed, the Bar having refused to approve of it in its projected form. Another consolidation of the Bar Act and the amendments thereto, will be contained in the Revised Statutes which are now being prepared.

By the Act, the General Council of the Bar, has power to make by-laws for, amongst other things, maintaining the honor and dignity of the Bar and discipline amongst its members, and also for defining and enumerating the professions, trades, occupations, business or offices incompatible with the dignity of the profession of advocate, as well as the offices or charges incompatible with the practice of the profession.

The General Council of the Bar, which is the executive of the corporation known as "The Bar of the Province of Quebec," is composed of the Batonnier and three delegates from the section of Montreal, the Batonnier and two delegates from the section of Quebec, the Batonnier and one delegate from each of the sections of Three Rivers and St. Francis, and the Batonniers of the sections of Arthabaska, Ottawa and Bedford. The Attorney-General of the Province is, ex officio, a member of the General Council of the Bar.

The public being interested in knowing what the Bar of the Province has done to maintain or raise its own standard, and to protect the public at large, a few quotations from the by-laws of the General Council will have their place here. The last revision of the by-laws

was adopted September 16th, 1886, but they have been copiously amended since, and a revised edition thereof is almost completed.

Following are some extracts referring to the discipline of the Bar (Section II.):—

Art. 5:—

“The following are declared to be incompatible with the practice of the Profession of an Advocate:

“1. Medicine, notarial work, surveying;

“2. All permanent salaried offices in the Provincial or Federal Civil service, — except the functions of translator, stenographer, sessional or permanent employee in one or other of the branches of Parliament or the Provincial Legislature;

“3. The office of Judge of the Court of Vice-Admiralty. Nevertheless when the sitting Judge of the Court of Vice Admiralty accepted his office at a time when it was permissible for him to exercise at the same time the profession of an advocate, the present regulation will not apply to the present holder of that position;

“4. District Magistrates, Judges of Police Courts and Courts of Sessions, and the Recorders of the Cities of Montreal and Quebec ;

“5. The office of Clerk or Assistant Clerk or permanent employee of the office of any of the Courts of Record in this Province, excepting the Court of Vice Admiralty;

“6. That of Sheriff, that of Registrar, excepting those Registrars who were named before the coming into force of the by-law.

Art. 6:

“The exercise of any trade, industry, business or transaction is declared to be incompatible with the

dignity of the Profession of an Advocate. Also the exercise of a bailiff's duties, of a constable; the position of cashier, manager, clerk or bookkeeper in a manufacturing Company, business house, railway or steamboat company, or other association of like nature; the position of insurance agent, business agent, real estate agent, collector, lender on note or on pledge, or lender's agent; that of musician, surveyor or architect."

Art. 7:

"The following acts, amongst others, are declared to be derogatory to the honour and the dignity of the profession:—

"1. To reveal a professional secret;

"2. To publish or communicate a false report of judicial proceedings, either injurious to the honour and dignity of a lawyer or of the profession or of the Bench;

"3. To take a lawyer by surprise, and disloyal acts in professional or social relations between brother lawyers;

"4. To abandon a client just before the hearing or the trial of his case without having given him a sufficient time to obtain another lawyer, or in imposing upon him conditions which the Advocate knows his client is incapable of fulfilling;

"5. To acquire a litigious right or a debt with the object of instituting legal proceedings, 'and by these means to earn fees or profits out of the right so bought or acquired;

"6. Abuse of confidence by an Advocate to the detriment of a client, amongst others:

"Acquiring for himself or for his relations or friends in whole or in part—either in his own or in his partner's name—rights or pretensions, whose existence and foundation only became known to the Attorney through consul-

tations with his clients, who thought they had a right thereto, and are by this means deprived thereof;

“7. To solicit clients or cases, or traffick in any manner with a ministerial officer or with a business agent;

“8. To accept a salary instead of regular fees fixed by the tariff, in giving up to the clients the regular fees; or to make any arrangement in advance having as object the reduction or giving up of fees granted by the tariff with the object of gaining a client or business;

“9. To share his fees with a client or to make any arrangement by which the client would participate or would have an interest in the fees;

“10. To undertake any case with an arrangement of participation in the results (*quota-litis*);

“11. To retain unjustly the moneys, papers or documents of a client;

“12. To announce oneself as collecting agent, real estate agent, or business agent, as lender of money on notes or pledges.”

The By-laws of the General Council of the Bar contain another provision, which has given rise quite recently to sensational episodes. It is in the following terms:—

Art. 9:

“Any member of the Bar who considers that his honour has been attacked by an act which has become public and which refers to the exercise of his profession, or who thinks that his professional honour is compromised by an act bearing judicial authority, will have the right to lay a complaint before the Council of his District, and to submit to the said Council an examination of his conduct and of his acts, and to obtain its decision on the facts. The District Council will follow in these cases the

procedure which it deems proper and will decide in a prompt and summary manner, saving the appeal to the General Council, according to ordinary procedure upon appeals in matters of discipline."

Another protection to the public is given by section 3562 of the Revised Statutes of Quebec. It is in the following terms:—

"The Clerk of any court of justice, having criminal jurisdiction in the Province, before which a trial of an advocate of this Province has been had, shall immediately inform the secretary of the section to which the said advocate belongs, of the sentence pronounced upon him, and forward to him a certified copy of such sentence."

Let us now turn to the social relations of the Bench and the Bar, and of the members of the Bar between themselves.

That the intercourse between the Bench and the Bar is a pleasant one to both sides, is beyond question. At every Bar dinner compliments are exchanged, the repetition of which would be unbearable to both parties, were they not sincere. The impeachment of a judge is a thing of the past, and the suspension of a lawyer for contempt of court is almost as obsolete. The tributes recently paid by the Bar to Mr. Justice Taschereau, first when he celebrated the twenty-fifth anniversary of his elevation to the Bench, and subsequently when he was raised to the dignity of Chief Justice of the Court of Appeals; to Sir Melbourne Tait, when he was appointed Chief Justice of the Superior Court; to Mr. Justice Mathieu when he too celebrated his "silver jubilee;" to Judge Doherty, when he retired from the Bench after fifteen years—to cite only a few recent

instances—were both spontaneous and heartfelt, and thereby all the more creditable to the recipients thereof.

But, apart from brief meetings between members of the Bench and Bar who belong to the Mount Royal or St. James' Clubs, and a few solemn occasions throughout the year, the social meetings between the Bench and the Bar of Montreal are few and far between, and the same may also be said, to a certain extent, to the intercourse between lawyers, outside of the business relations.

It would be foolish to deny that the Court House of Montreal is not a home for the lawyers of the Canadian Metropolis, such as the Inns of Court are for the London Bar, the Palais de Justice for the lawyers of France and Belgium, Osgoode Hall for all Ontario, but particularly for the residents of the Queen City, or even the Quebec Court House to the local Bar. Whether it will so become at some future date is not easy to foresee. The additions made to it from time to time have spoiled its original architectural beauty, without giving the Bar anything like the space which would be required to make it a little more than a market place for the transaction of legal business. As it is, it is little more to the lawyer than the Stock Exchange is to the broker. Its council meets in a remote room, immediately under the tin-covered roof of the edifice, where the portraits of the batonniers of the last decade cover the walls which will soon become insufficient. Its library is not accessible except when the Court House is open for business, from 9 a.m. till 5 p.m. and attempts to keep it open at nights have proved to be a useless expense, as the members of the Bar, either through force of habit, or on account of the inconvenience of the locality, refrained from turning up in sufficient numbers.

For this reason particularly the members of the

Montreal Bar have formed societies, the purpose of which is to remedy that evil, and group the lawyers together outside of business hours, for social as well as for professional purposes.

The first in date is the Junior Bar Association, founded November 4th, 1898, for the following purposes:—

- (a) To strengthen the bonds of confraternity existing among the members of the junior Bar of Montreal.
- (b) To procure for the members information upon matters of interest to their profession.
- (c) To further the interests of the Bar, and particularly those of its junior members.
- (d) To establish and maintain friendly relations with like associations abroad.

Its active members must be advocates of less than ten years standing; they may, after that period, be elected honorary members.

Although the Association has acquired more fame outside of the Bar, through its dinners than through its works, it has faithfully adhered to its programme, and one of its past presidents, Mr. C. Dessaulles, in March, 1905, reviewed the work of the Association in the following terms:—

“The best proof that we do not meet for a vain purpose is to be found in the fact that we have 206 pages of minutes of our meetings, which alone would justify our organization and existence.

“Since the 4th November, 1898, date of its organization, our Association has, throughout the seven months during which we meet each year, held 87 meetings. Special Committees have prepared reports or recom-

mendations on 21 subjects of interest to the Bar. We have discussed 55 law points, all of a practical nature. We have listened to 39 addresses on serious subjects, for the most part judicial. We have 154 active members paying their annual subscription; 15 of our members have within the past two years passed the 10 year limit in practice and according to our constitution those of them who desire to keep up their interest in our work may be elected honorary members; they only cease to take part in the internal management of the Association.

“Few Associations with a purpose in Montreal, can prove their usefulness by figures so convincing. This past is to us the assurance of a lasting future.”

The Association may also claim credit for having organized public lectures, to which the Bench and Bar at large were invited. Some of the lecturers, so invited by the Junior Bar, came from outside the city, as for example, Mr. Nerinx of Brussels, Messrs. Charles Thierry and René Grivart of Paris, and Hon. Charles Langelier, of Quebec.

The Association has also undertaken the gigantic task of re-drafting the Civil Code and adapting it to modern ideas and needs, as France is now doing for the Code Napoleon. The work, of course, will not be completed for years.

In short, the existence of the Junior Bar Association has been beneficial to its members, who have thereby had opportunities of meeting one another; of exchanging views on subjects of professional interest and of attracting the attention of their senior brothers of the Bar at large, whose work has often been facilitated by the preliminary labours of the Association; to the law students by the good example given, which caused Laval University to

put its halls at the disposal of the Junior Bar. The only ones who can complain of their connection with the Association are its founders, who are liable to be still designated as Juniors after they have passed the age limit of ten years, an inconvenience in a profession where age and experience are valuable assets.

A society of more recent formation is the Montreal Bar Association, recently inaugurated, and founded "for the purpose of promoting the interests of the Bar, of facilitating professional labours, and of fostering friendly relations amongst its members."

It has secured commodious quarters in the Molsons Bank Building, corner of St. Catherine and Stanley Streets, which will be open to members every afternoon and evening. It already has a library in embryo, and intends to organize for next winter a series of lectures and debates. Foreign Judges and lawyers of prominence are expected to be amongst the lecturers.

The financial standing of the individual members of the Bar of Montreal is hard to establish. A Belgian writer once said: "I would rather believe the woman who speaks of her age than the lawyer who speaks of his income." In Montreal, the late Sir Francis Johnson once remarked: "I have only known two members of the Bar who died rich, and they were no lawyers." This is hardly true of the present generation. In a city like Montreal, successful practitioners, even at the Bar, are bound to make money, if not to keep it. On the other hand, the public must not take to the letter the figures mentioned from time to time in the papers, as representing the average earnings of leaders of the Bar. Then there are the others, those who are not leaders, the

500 advocates who with equal ardor, but less success, try to compete with their 70 more prosperous brothers. The "New York Herald", a few years ago, fixed the average yearly earnings of the lawyers in New York at \$1,200 a year. If such is the case a similar calculation in Montreal would lead to appalling results, and it is to be wondered that more of our University graduates do not turn their eyes to the new provinces of the West, for instance.

It must also be said that the Montreal Bar has seldom received from the powers, its fair share in the distribution of legal work. In matters of general interest our lawyers are too often ignored. The Railway Commission did not see fit to retain a member of the Quebec Bar, even as junior counsel. In the Alaska dispute, we only supplied a junior counsel, and in the fisheries dispute we were only represented at a late stage of the proceedings.⁽¹⁾ The Bar of Montreal has only supplied one of the four judges who have hitherto represented the Province of Quebec on the Supreme Court Bench, and of the six judges of the Court of Appeals of to-day, only two have ever been members of the Montreal Bar. A cursory examination of the records of the Exchequer Court of Canada would lead a stranger to believe that Montreal is only a city ranking somewhere between Quebec and St. John, and not the metropolis of Canada.

The lack of energy displayed so far by the Bar of Montreal, as a body, may account for these surprising results.

(1) The counsel fees paid for the recent Insurance inquiry amount to \$37,300, plus \$1,395.48 expenses, both counsels being members of the Toronto Bar. The whole investigation cost, so far, about \$100,000.00, Toronto getting nine tenths, and Montreal a little over one twentieth, of the whole expense.

Nevertheless the Montreal lawyer, as a rule, lives happy, if sometimes poor, enjoying the consideration of his judges and the courtesy of his fellow lawyers; he sometimes wins his case, and oftener deserves the gratitude of his client, and the respect of the public. What more can he ask?

“Les gueux, les gueux
Sont des gens heureux,
Ils s'aiment entre eux,
Vivent les gueux !”

E. FABRE SURVEYER.

Montreal, 1907.

